

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

NOVEMBER 6, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, Vice President
Florence Bos, Member
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Staff met with Steve Smith of the Labor and Employment Agency to discuss the direction, structure and staffing of the new agency.
- B. Staff met with representatives of the California Civil Rights Officer Council to discuss the status of the state's Equal Employment Opportunity Program in light of the passage of SB 1045 and Connerly v. State Personnel Board. Staff will provide clarifying information to departments, unions and advocate organizations.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

- C. An issue involving contracting for Psychiatric Technicians in the Department of Corrections has been referred to an evidentiary hearing.
 - D. Governing Magazine's recent article on "Civil Service Reform" in Georgia, Florida and Texas.
3. REPORT OF THE CHIEF COUNSEL - Elise Rose
Report given by Karen Brandt, Senior Staff Counsel

The Chief Counsel reported on the following:

Litigation:

- A. Fleming v. State Personnel Board - The Sacramento Superior Court has issued a judgment denying petitioner's petition for writ of mandate, finding that there was substantial evidence to support the State Personnel Board's findings of misconduct by the petitioner.
4. REPORT ON LEGISLATION - NONE
5. PERS UPDATE - Sean Harrigan

The Board was advised of the following:

State Personnel Board Member Sean Harrigan provided a written summary of activities at the California Public Employment Retirement System and highlighted the following:

- A. Fred Buenrostro has been hired to replace Jim Burton as CalPERS Executive Officer.
- B. CalPERS has initiated a selection process to fill the vacant General Counsel and Chief Deputy Executive Officer position. The CalPERS Board will appoint the General Counsel and the new Executive Officer will appoint the Chief Deputy Executive Officer.
- C. In January 2003, there will be three new CalPERS Board members - the new Controller and two elected members.
- D. Health benefits remain a key issue for CalPERS. Staff is working on strategic approach to health issues that will be presented to the CalPERS Board next year.

6. MERIT SELECTION MANUAL HEARING

Hearing to adopt New Article 3.5, Section 50 in Title 2 of the California Code of Regulations. Adoption of Rule 50 will incorporate by reference the State Personnel Board's "Merit Selection Manual: Policy and Practices", dated November 2002. The "Merit Selection Manual" will clarify and establish standards for the State's selection system.

Persons Participating:

Shelly Langan, Manager, Policy Division, California State Personnel Board

Phil Kalstrom, Selection Manager, Office of the Inspector General

Rueben Jiminez, Chief, Human Resources Personnel Administration, Department of Pesticide Regulation

Karen Desmarais, Selection Manager, Department of Consumer Affairs

Neal Johnson, Representative, California State Employees Association, SEIU #1000

Ed Perez, State employee

ACTION: Submitted

7. ORAL ARGUMENT

Oral argument in the matter of LULU MAE HEIGHT-TIGNER, CASE NO. 00-3414E. Appeal from constructive termination. Department of Corrections.

ACTION: Oral argument not held, written testimony presented.
Submitted

8. ORAL ARGUMENT

Oral argument in the matter of CERETHA SHERRILL, CASE NO. 00-3182. Appeal from six months suspension. California Youth Authority.

ACTION: Oral argument not held, written testimony presented. On November 6, 2002, Board adopted the Administrative Law Judge's decision modifying six months suspension to a 90-day suspension and awarding backpay, interest and benefits.

VOTE: Elkins, Bos, Harrigan - Aye.

9. ORAL ARGUMENT
Oral argument in the matter of PATRICIA SABATO-JONES,
CASE NO. 01-3789. Appeal from dismissal. Unemployment
Insurance Appeals Board.

Persons Participating:

Ralph W. Hilton, Chief Counsel, representing Unemployment
Insurance Appeals Board
Amiel Jaramillo, Attorney at Law, representing appellant

ACTION: Submitted

10. ORAL ARGUMENT
Oral argument in the matter of WENDYLIN DONALD, CASE NO.
00-3953. Appeal of rejection during probationary period.
Department of Mental Health.

Persons Participating:

Evon Dixon-Montgomery, Senior Staff Counsel, representing
Department of Mental Health
Mark Ambrose, Attorney at Law, representing appellant

ACTION: Submitted

BOARD ACTIONS

12. STATE PERSONNEL BOARD SUMMARY MINUTES OF OCTOBER 22, 2002

ACTION: Adopted on November 6, 2002.

VOTE: Elkins, Bos, Harrigan - Aye.

13. ADMINISTRATIVE LAW JUDGE CASES

On November 6, 2002, Board adopted the following decisions presented by Karen Brandt, Senior Staff Counsel for Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Bos, Harrigan - Aye.

CHIEF COUNSEL RESOLUTION

LAURIE MCCLOSKEY, CASE NO. 02-2941

Appeal from discrimination complaint

Classification: Workers Compensation Insurance Technician

Department: State Compensation Insurance Fund

ACTION: Board adopted a resolution referring matter to an Administrative Law Judge to conduct an evidentiary hearing and prepare a proposed decision

PROPOSED DECISIONS

RONLAD GRIFFIN, CASE NO. 02-2157

Appeal from five percent reduction in salary

Correctional Officer

Tehachapi - California Correctional Institution

Department of Corrections

ACTION: Five percent reduction in salary for six months sustained

CHRISTOPHER KING, CASE NO. 02-1753

Appeal from non-punitive termination

Heavy Equipment Mechanic

Department of Water Resources

ACTION: Non-punitive termination sustained

CARLOS MARTINEZ, CASE NO. 02-2079

Appeal from 2 work days suspension

Special Agent Supervisor

Department of Justice

ACTION: Two work days suspension sustained

JODY A. MCGUIRK, CASE NO. 02-2160

Appeal from suspension for ten work days

Psychiatric Technician,

Pomona - Developmental Center

Department of Developmental Services

ACTION: Suspension for ten work days modified to a two workdays suspension

CYNTHIA A. VASQUEZ, CASE NO. 02-1149
Appeal from dismissal
Youth Correctional Officer
Chino - Youth Correctional Facility
Department of the Youth Authority
ACTION: Dismissal modified to a ten percent reduction in
salary for six months

CARL R. WEBB, CASE NO. 01-3795
Appeal from dismissal
Protestant Chaplain
Blythe - Ironwood State Prison
Department of Corrections
ACTION: Dismissal sustained

SANDRA PAINTER, CASE NO. 01-2435
Appeal from rejection during
probationary period
Senior Vocational Rehabilitation Counselor
Department of Rehabilitation
ACTION: Rejection during probationary period sustained

EZECHIEL BANALES, CASE NO. 02-0599
Appeal from dismissal
Correctional Officer
Soledad - State Prison
Department of Corrections
ACTION: Dismissal sustained

CARMENCITA DORADO, CASE NO. 02-0171
Appeal from demotion from the position
of Senior Psychiatric Technician to the
position of Psychiatric Technician
San Jose - Developmental Center
Department of Developmental Services
ACTION: Demotion from Senior Psychiatric Technician to
Psychiatric Technician sustained

DANIEL PANGELINA, CASE NO. 02-2467
Appeal from dismissal
Automotive Pool Attendant II
Department of Transportation
ACTION: Dismissal sustained

WERNER STEPHENSON, CASE NO. 02-1176
Appeal from dismissal
Structural Steel Painter
Department of Transportation
ACTION: Dismissal sustained

GREGORY B. GARRETT, CASE NO. 02-1849
Appeal from three working days suspension
Payroll Operations Supervisor
Office of the State Controller
ACTION: Three work days suspension modified to official
reprimand

GEORGE REESE, CASE NO. 02-2462
Appeal from 30 working days suspension
Officer
Department of California Highway Patrol
ACTION: 30 working days suspension sustained

DEBORAH WHITE-SANBORN, CASE NO. 02-1155
Appeal from dismissal
Senior Special Investigator
Porterville - Developmental Center
Department of Developmental Services
ACTION: Dismissal modified to a six month suspension

ARBITRATION

RONALD MIRANDA, CASE NO. 02-0075
Appeal from three day suspension
Officer
California Highway Patrol
ACTION: Three day suspension sustained

THOMAS SANTIAGO, CASE NO. 02-0053
Appeal from two day suspension
Officer
California Highway Patrol
ACTION: Two day suspension modified to official reprimand

14. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION
18671.1 EXTENSION.

ACTION: See pages 15-18.

15. WITHHOLD APPEALS
On November 6, 2002, the Board adopted the following
decisions presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board.
VOTE: Elkins, Bos, Harrigan - Aye.

JOHNNY ALDANA JR., CASE NO. 02-1466
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

LATASHA CHOWNING, CASE NO. 02-0992
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

AARON COLE, CASE NO. 01-4065
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

TAMIKA EDWARDS, CASE NO. 02-0821
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BENJAMIN ESSEX, CASE NO. 02-0199
Classification: Hospital Police Officer
Department of Mental Health
ACTION: GRANTED

MACARIA FLORES, CASE NO. 01-2998
Classification: Environmental Specialist I
Department of Water Resources Control Board
ACTION: GRANTED

JOHN GONCALVES, CASE NO. 02-0998
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KEEVE HARPER, CASE NO. 02-0948
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JESSE HERNANDEZ, CASE NO. 02-0871
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

RICHARD HERNANDEZ, CASE NO. 02-0866
Classification: Correctional Officer
Department of Corrections
GRANTED: DENIED

ODELL HILL, CASE NO. 02-0956
Classification: Parole Agent I, Adult Parole
Department of Corrections
ACTION: WITHDRAWN

RODRIGO IBARRA, CASE NO. 02-1262
Classification: Correctional Officer
Department of Corrections
GRANTED: DENIED

SAIF UDDIN KUTUBI, CASE NO. 02-0674
Classification: Correctional Officer
Department of Corrections
GRANTED: DENIED

BRANDY LEE, CASE NO. 02-0960
Classification: Correctional Officer
Department of Corrections
GRANTED: DENIED

DAVID LIPARI, CASE NO. 02-1014
Classification: Correctional Officer
Department of Corrections
GRANTED: DENIED

CONNIE LOMONACO, CASE NO. 02-0324
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

MARK LOPEZ, CASE NO. 02-0981
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

BILLIE MONTGOMERY, CASE NO. 02-1190
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

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KENNY NASH, CASE NO. 02-0747
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

RODNEY NITTA, CASE NO. 02-1349
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

RALPH OROSCO, CASE NO. 02-0753
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PETER SCHMIDT, CASE NO. 02-0655
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KHANH TRUONG, CASE NO. 02-1100
Classification: Correctional Officer
Department of Corrections
GRANTED DENIED

EUGENE VASQUEZ, JR., CASE NO. 02-0390
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FRANCISCO VEGA, CASE NO. 02-1099
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

RICKY VINYARD, CASE NO. 02-1015
Classification: Youth Correctional Officer
California Youth Authority
ACTION: GRANTED

16. MEDICAL APPEALS

On November 6, 2002, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Bos, Harrigan - Aye.

JUAN REAL, JR., CASE NO. 02-1046

Classification: Cadet, CHP

California Highway Patrol

ACTION: DENIED

WAYNE POMILIA, CASE NO. 02-3299

Classification: Correctional Officer

Department of Corrections

ACTION: GRANTED

17. MERIT ISSUE COMPLAINTS

On November 6, 2002, the Board adopted the following decision presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Bos, Harrigan - Aye.

(Merit Issue Complaint)

PATRICK CONROY, CASE NO. 02-3154

Classification: Supervising Materials and Research Engineer

Department of Transportation

ACTION: GRANTED

18. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) PRINCIPAL DEPUTY LEGISLATIVE COUNSEL II

The Legislative Counsel Bureau proposes to allocate the above position to the CEA category. The Principal Deputy Legislative Counsel II will manage one of four legal divisions within the Legislative Counsel Bureau providing professional legal services to members of the California Legislature. The department indicates that the

position is at the third organizational level and reports to the Chief Deputy Legislative Counsel.

- (2) DISTRICT 3, DEPUTY DISTRICT DIRECTOR
PLANNING & LOCAL ASSISTANCE PROGRAMS
The Department of Transportation proposes to allocate the above position to the CEA category. The District 3, Deputy District Director will be responsible for the transportation planning, mass transportation and local assistance programs in District 3 which is comprised of 11 counties (Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, and Yuba).

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. EXPEDITED HEARINGS - PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 52.4. (Hearing held May 7, 2002).

NO ACTION

2. ANSWER ON APPEALS FILED WITH STATE PERSONNEL BOARD. PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 63. (Hearing held May 7, 2002).

NO ACTION

3. Status of the State's Decentralized Testing. (Hearing held July 9, 2002).

NO ACTION

4. MERIT RULE - Proposed adoption of the new Section 250 to the California Code of Regulations (CCR) entitled Requirement that Selection be Based on Merit and Fitness. (Hearing held July 23, 2002).

NO ACTION

5. BRYAN JONES, CASE NO'S 99-3883 & 00-4930. Appeal from dismissal. State Fair Exposition. (Oral argument held October 8, 2002).

NO ACTION ON APPEAL OF DISMISSAL. Appellant's request for further oral argument denied by Board on November 6, 2002.
VOTE: Elkins, Bos, Harrigan - Aye.

6. MARSHALL HAVNER, CASE NO. 01-3111B. Appeal from backpay. Department of Developmental Services. (Oral argument held October 8, 2002).

NO ACTION

7. YOLANDO CANEDO, CASE NO. 00-4072. Appeal from discrimination complaint. Department of Corrections. (Oral argument held October 8, 2002).

NO ACTION

8. ROMONDO SIZEMORE, CASE NO. 00-0418B. Appeal from backpay. Department of Corrections. (Oral argument held October 8, 2002).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on November 6, 2002.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Elkins, Bos, Harrigan - Aye.